

**FILED**

**MAR 11 2013**

Clerk, U.S. District Court  
District Of Montana  
Missoula

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA

HELENA DIVISION

TOM RICHARD NICHOLS,	)	CV 12-102-H-DLC-RKS
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
STATE OF MONTANA,	)	
	)	
Defendant.	)	
_____	)	

United States Magistrate Judge Keith Strong entered Findings and Recommendation on February 6, 2013, and recommended dismissing this action. Plaintiff did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir.

1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Strong found Nichols’ claims are frivolous. He stated that the State of Montana is immune to suit and amendment in this situation would be futile because Nichols either lacks standing to challenge the state statute at issue or his claims are barred by the doctrines set forth in Rooker-Feldman and Heck. After a review of Judge Strong’s Findings and Recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Strong’s Findings and Recommendation (doc. 10) are adopted in full. The Complaint (doc. 2) is DISMISSED.

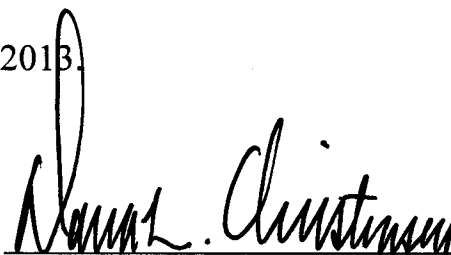
The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). Mr. Nichols’ claims are frivolous and malicious.

The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Fed.R.App.P. 24 (a)(3)(A) that any appeal of this decision

would not be taken in good faith. The record makes plain the instant Complaint is frivolous as it lacks arguable substance in law or fact.

DATED this 11<sup>th</sup> day of March 2013.

A handwritten signature in black ink, appearing to read "Dana L. Christensen", written over a horizontal line.

Dana L. Christensen, District Judge  
United States District Court